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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,433	09/18/2003	John C. Van Doren	3944-13-CIP	8306
22442	7590	09/03/2004	EXAMINER	
SHERIDAN ROSS PC 1560 BROADWAY SUITE 1200 DENVER, CO 80202				KOSOWSKI, ALEXANDER J
		ART UNIT		PAPER NUMBER
				2125

DATE MAILED: 09/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/666,433	VAN DOREN ET AL.
	Examiner Alexander J Kosowski	Art Unit 2125

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 18 September 2003 and 04 December 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-30 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 18 September 2003 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

1) Claims 1-30 are presented for examination.

Priority

2) Examiner notes that the current application is a CIP of pending application 10/267197, which claims benefit of provisional application 60/394736.

The application also claims priority to application number 09/815342, and in the preliminary amendment filed 12/4/03, the specification was amended to add priority to application number 10/102614. Examiner cannot grant priority to either of these applications as they are not either parent applications, foreign filed applications, or provisional applications, they are simply related cases.

Examiner also notes that in the preliminary amendment filed 12/4/03, a request was made to have examiner John Teresinski examine the current application. However, upon contacting the examiner, he stated that the current application does not belong to his art unit, and he would not examine it.

Claim Objections

3) Claims 7-9 objected to because of the following informalities:

Referring to claims 7-9, the claims contain formulas in which not all of the variables have been defined.

Appropriate correction is required.

Double Patenting

4) A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v.*

Eagle Mfg. Co., 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

5) Claims 1-30 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-30 of copending Application No. 10/267197. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

IDS

6) The information disclosure statements filed on 12/2/03 and 11/14/03 have not been considered due to the double patenting rejection above. If the double patenting rejection is overcome, an art search will be performed and the IDS's considered.

Conclusion

7) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander J Kosowski whose telephone number is 703-305-3958. The examiner can normally be reached on Monday through Friday, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on 703-308-0538. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. In addition, the examiner's RightFAX number is 703-746-8370.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

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Alexander J. Kosowski
Patent Examiner
Art Unit 2125



LEO PICARD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100